IN THE

Supreme Court of the United States

OCTOBER TERM 1959

No. 681

FRANK CAMBIANATA,
Petitioner,
vs.
STATE OF OHIO,
Respondent.

MOTION FOR LEAVE TO DISPENSE WITH PRINTING OF RECORD, PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF

EDWARD T. KELLEY,
Counsel for Petitioner,
[illegible]

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MOTION FOR LEAVE TO DISPENSE WITH PRINTING OF RECORD

Petitioner, by his counsel respectfully moves the Court that he may be permitted to proceed herein without filing a printed record of the proceedings below, and states as reasons for this motion:

1. No record of proceedings below has ever been printed, in that none was required under applicable Ohio procedure.

2. The record is extensive, and includes numerous exhibits consisting of letters, documents and official instruments, which, to be included in a printed record would have to be photographed.

3. Petitioner has caused to be filed with the Clerk of this Court a true copy of the proceedings had below.

4. Petitioner is poor, and without funds to pay for the printing of the record below.

Wherefore, petitioner prays that he may be relieved of the obligation to file a printed record, and that this Court will, notwithstanding, consider the petition for writ of certiorari.

Respectfully submitted,

EDWARD T. KELLEY,
Detroit, Michigan,
Counsel for Petitioner.

IN THE

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PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The highest court of the state denied a petition to review, without opinion, and the opinions of the Court of Appeals and the Common Pleas Court are not reported.

JURISDICTION

The jurisdiction of this court rests on Section 1257 (3) of the Judiciary Act of 1948 (T. 28, Section 1257(3), U. S. C. A.) as follows:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as

follows: (3) By writ of certiorari, where any title, right, privilege or immunity is specially set up or claimed under the Constitution * * *

and

Art. 4, Sec. 2, cl. 2 of the Constitution of the United States, which provides:

> "A person charged in any State with Treason, felony, or other crime, who shall flee from Justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime,"

and

Amendment XIV, Section 1, of the Constitution of the United States, which provides:

> "* * * nor shall any State deprive any person of life, liberty or property without due process of law;"

and,

Amendment XIV, Section 1, of the Constitution of the United States, which provides:

> "* * * nor deny to any person within its jurisdiction the equal protection of the laws."

SUMMARY OF FACTS

In 1930 petitioner, an alien, was sentenced in the Recorder's Court for the City of Detroit, Michigan, for the commission of a felony, to serve 15 to 30 years in the Michigan State Prison. On November 16, 1936, the Governor of Michigan commuted the sentence so as to read "6½ to 30 years, less good time allowance for deportation only." On December 16, 1936 he was physically delivered into the hands of United States Immigration agents at the Michigan State Prison, and was deported to Italy from the port of New York on January 9, 1937.

On July 17, 1946 Cammarata was arrested by Immigration authorities in Ohio, and on July 26, 1946 the Michigan Parole Board was so advised. On December 26, 1946 and on January 20, 1947 the Michigan authorities advised the Immigration Service: "Our parole board is not the least interested in this matter, and has no intention of interceding in any respect."

On November 14, 1950, agents of the Michigan Parole Authority issued a parole violation warrant charging that petitioner had been paroled on December 16, 1936, pursuant to a document of that date carrying only the typewritten signature of the Commissioner of Paroles, which *inter alia* recited:

> "Whereas, it is desired to parole Frank Cammarata #29806 in custody of warden for delivery to immigration officials if and when called for for deportation to Italy. In the event subject is not deportable this action is void. Immigration authorities to hold this inmate against bail, should he attempt to stay deportation. Must never return to the United States. Immigration authorities to notify parole department when subject actually

> leaves the country. Now, therefore, know ye that I, Frank D. Fitzgerald, governor as aforesaid, by virtue of the power and authority in me vested by law, do hereby parole said Frank Cammarata and permit him to go at large outside the buildings and enclosures of said prison, and I do hereby require, that upon the production and exhibition to you of these presents, the said prisoner be forthwith allowed to proceed to the place of employment provided for him. And you are hereby required to make due return hereof, with your doings herein, according to law."

The space provided at the bottom of the document for the Warden's return, is not filled in.

The parole violation warrant states no particular in which petitioner is claimed to have violated his parole, but states only that he became a delinquent: "on or between September 1, 1939 and December 1, 1939."

On March 2, 1951 the Governor of Michigan issued his requisition directed to the Governor of Ohio for the extradition of petitioner. On March 5, 1951, the Governor of Ohio issued his fugitive warrant. Petitioner's application for a Writ of Habeas Corpus was denied by the Common Pleas Court for the County of Trumbull, Ohio, on August 29, 1951. The Court of Appeals for Trumbull County, Ohio affirmed the Common Pleas Court on June 2, 1952. On October 29, 1952 the Supreme Court of Ohio denied petitioner's motion to certify. On January 16, 1953 this Court extended until March 28, 1953 the time within which to apply for a writ of certiorari.

QUESTIONS PRESENTED

1. Whether petitioner is charged in Michigan with a felony or other crime.
2. Whether petitioner, as an alien, is entitled to the protection of the "due process of law and equal protection of the law" clauses of the XIVth Amendment to the United States Constitution.
3. Whether a State can, consistent with the due process of law guaranteed by the XIVth Amendment, surrender one to the Federal Authorities for deportation, and thereafter, following deportation, reassert jurisdiction over him.
4. Whether a State can, consistent with the equal protection of the laws guarantee of the XIVth Amendment, treat with one as though parolled, without any compliance with the provisions of the state law for parole.

MANNER IN WHICH FEDERAL QUESTIONS WERE RAISED

The Federal questions were raised throughout all the proceedings in the Ohio courts, commencing with petitioner's application for a writ of Habeas Corpus in the Common Pleas Court of Trumbull County, Ohio. The Court of Appeals of Trumbull County, Ohio, held that petitioner was subject to the jurisdiction of the Michigan Parole Authority, and hence a person charged with a felony in Michigan within Art. 4, Sec. 2, Cl. 2 of the Constitution. As against petitioner's contention that he was denied due process of law guaranteed by the XIVth Amendment, the State of Ohio urged in its brief in opposition to the Motion to Certify in the Ohio Supreme Court:

"5. The Court of Appeals did not err in holding appellant had not been denied due process of law as guaranteed under the 14th Amendment, because the 14th Amendment applies only to citizens who have been either born or naturalized in this country and because appellant is an alien."

The Supreme Court of Ohio sustained the determination of the Court of Appeals when it declined, without opinion, to review the matter.

REASONS FOR ALLOWANCE OF WRIT

1. The Ohio court's determination that petitioner is extraditable as a fugitive from Michigan's justice within the provisions of Art. 4, Sec. 2, Cl. 2, of the Constitution, and Tit. 18, Sec. 3182 U. S. C. A., is erroneous, and contrary to the pronouncement of this Court.

2. The Ohio court's determination that petitioner, as an alien, is not entitled to the protection of due process of law and equal protection of the law guaranteed by the XIVth Amendment is erroneous, and contrary to the pronouncement of this Court.

PRAYER

Petitioner prays that a writ of certiorari issue from this court to the Supreme Court of the State of Ohio and the Court of Appeals for Trumbull County, Ohio, demanding those courts to certify and send to this court a full and complete transcript of the record and proceedings in said cause to the end that the same may be reviewed and determined by this court, and that the judgment of the said State Courts be reversed.

Respectfully submitted,

EDWARD T. KELLEY.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

ARGUMENT

I.

PETITIONER IS NOT A PERSON CHARGED WITH THE COMMISSION OF A FELONY OR OTHER CRIME RENDERING HIM EXTRADITABLE UNDER ARTICLE 4, SEC. 2, CL. 2 OF THE CONSTITUTION

No person can be lawfully removed from one state to another by virtue of this clause of the Constitution, unless: 1. He is charged in one state with treason, felony or other crime; 2, he has fled from justice; 3, a demand is made for his delivery to the state wherein he is charged with crime. In the absence of any one of these conditions, the Constitution affords no warrant for a restraint of his liberty. *Pierce v. Creecy,* 210 U. S. 387. A paroled prisoner, who has left the state of conviction, pursuant to the terms of his parole, but later violates the parole, is a fugitive from justice subject to extradition within this clause. *Reed v. Colpoys,* 99 F. 2d 396, 69 App. D. C. 163, certiorari denied, 305 U. S. 598. Michigan's assertion of its right to extradite petitioner from Ohio is predicated solely upon the claim that petitioner is a parolee. In determining that petitioner is a parolee, the highest Court of Ohio has given to the Michigan statutes governing parole a construction which is in conflict with the Federal Constitutional provision. The Ohio Court has held certain Michigan statutes governing parole valid and applicable; and that under those statutes one who is released by the State of Michigan to Federal authorities for deportation, who is deported, but subsequently re-enters the United States, allegedly in violation of an order of the Michigan Parole Board that he shall not

re-enter the United States, is a person charged with crime, who has fled from justice and extraditable under Art. 4, Sec. 2, Cl. 2, of the Constitution.

At the time petitioner was released by the State of Michigan to Federal Authorities for deportation there was no statutory authority for the parole of an inmate to Federal Authorities for deportation. Only the Governor, in the exercise of his Constitutional authority to grant pardons, commutations, and reprieves could effect petitioner's surrender to the Immigration Service. Art. VI, Sec. 9, Michigan Constitution of 1908.

Parole is a creature of the legislature, and a person incarcerated in a state prison may be paroled only where there is express statutory authority therefor. *People v. Bendoni*, 263 Mich. 295.

Petitioner's release to the Immigration Service for deportation was effected in absolute disregard of these mandatory provisions of the Michigan Parole statutes then in effect, to-wit:

1. (Sec. 28.1294 Michigan Statutes Annotated) The parole document shall distinctly state whether or not the prisoner shall be subject to be arrested and returned for violation of the conditions of his parole.

2. (Sec. 28.1296 Michigan Statutes Annotated) Return of execution (of every parole document) shall be promptly made to the Governor.

3. (Sec. 28.1314 Michigan Statutes Annotated) No convict shall be released on parole until the Governor or advisory board in the matter of pardons shall have satisfactory evidence that arrangements have been made for such honorable and useful employment of the prisoner as he is capable of performing, and some responsible person (not a relative) shall agree to act as his "first friend and ad-

viser'' who shall execute an agreement to employ the prisoner, or use his best efforts to secure suitable employment for him * * *.

4. (Sec. 28.1319 Michigan Statutes Annotated) Upon the granting of a parole to any prisoner the length of time the prisoner shall remain on parole shall be determined, which shall not be more than four (4) years in any case.

5. (Sec. 28.1320 Michigan Statutes Annotated) Each paroled convict shall make a written report on the last day of each month to the warden or superintendent of the prison from which he was released * * * and the warden shall each month tabulate and report in writing the information thus received.

6. (Sec. 28.1327 Michigan Statutes Annotated) Upon the granting of every parole, the sheriff of the county to which the subject is paroled shall be notified, naming the county where convicted, the crime for which convicted, the name and address of the first friend, the length of time which the prisoner shall be required to report before receiving final discharge.

Thus the highest Court of Ohio has held that petitioner, although released in disregard to these mandatory provisions of the Michigan Parole Statutes, was, notwithstanding, a parolee, subject to extradition within the Federal Constitution. The court of Ohio has held that one, released to Federal Authorities for deportation, who thereafter is found in another state, is *per se*, a person charged with felony or other crime who has fled from justice.

II.

THE STATE OF MICHIGAN IS POWERLESS TO ACT IN THE MATTER OF DEPORTATION OF AN ALIEN

Since *Fong Yue Ting v. United States*, 149 U. S. 698, we believe it indisputable that: "The power to exclude or to expel aliens, being a power affecting international relations, is vested in the political departments of the government, and is to be regulated by treaty or by act of Congress, and to be executed by the executive authority according to the regulations so established, except so far as the judicial department has been authorized by treaty or by statute, or is required to by the paramount law of the constitution to intervene." Any attempt on the part of Michigan to legislate with respect to, or to act in connection with the immigration or deportation of aliens would be an invasion of a right expressly reserved to the Federal Government. Art. I, Sec. 8. We can conceive of no theory under which the Michigan Parole Authority could, if it did:

1. Direct the Immigration Authorities to hold petitioner against bail, should he attempt to stay deportation,

2. Direct that petitioner must never return to the United States.

But the Ohio Court has held that petitioner is extraditable within Art. 4, Sec. 2, Cl. 2, in that he violated a valid condition of a Michigan parole order, to-wit: "Must never return to the United States."

III.

THE OHIO COURT'S DETERMINATION THAT AN ALIEN IS NOT ENTITLED TO THE PROTECTION OF DUE PROCESS OF LAW AND EQUAL PROTECTION OF THE LAWS IS IN CONFLICT WITH THE DECISIONS OF THIS COURT

When the Court of Appeals of Trumbull County, Ohio, held, and the Ohio Supreme Court affirmed, without opinion, that petitioner, because he is an alien is not entitled to the safeguards of due process of law and equal protection of the law, guaranteed by the XIVth Amendment, such holding was in conflict with *Truax v. Raich*, 239 U. S. 33. The description, as contained in the XIVth Amendment "any person within its jurisdiction," as it has frequently been held, includes aliens. These provisions, said this Court, in *Yick Wo v. Hopkins*, 118 U. S. 356, (referring to the due process and equal protection clauses of the XIVth Amendment) are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws.

CONCLUSION

It is respectfully requested that this petition for writ of Certiorari to the Supreme Court of Ohio, and the Court of Appeals of Trumbull County, Ohio be granted.

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IN THE

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NO. 681

FRANK CAMMARATA, Petitioner

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On application for Certiorari to the Supreme Court of Ohio, and the Court of Appeals of the Seventh Judicial District of Ohio, Trumbull County.

BRIEF OPPOSING PETITION FOR CERTIORARI

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I

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On application for Certiorari to the Supreme Court of Ohio, and the Court of Appeals of the Seventh Judicial District of Ohio, Trumbull County.

BRIEF OPPOSING PETITION FOR CERTIORARI

I

Opinions of Courts Below.

We publish as Appendix A and B, respectively, copies of the opinions of the Court of Common Pleas, Trumbull County, Ohio, and the Court of Appeals of the Seventh Judicial District of Ohio, Trumbull County.

II

Counter-Statement on Jurisdiction.

It is our position that the petition for certiorari presents no substantial Federal questions, and that such questions as are raised therein are frivolous.

III

Counter-Statement of the Case.

We deem it necessary to correct the following inaccuracies and omissions in the statement of petitioner:

1. We supplement the first paragraph of the statement by adding that on the 26th day of February, 1931, Frank Cammarata, having been adjudged guilty by a jury of the offense of robbery, while armed with a dangerous weapon, was sentenced by a judge of the recorder's court of the city of Detroit to serve not less than 15 and not more than 30 years.[1] On appeal to the Michigan Supreme Court, the judgment was affirmed, *People v. Cammarata,* 257 Mich. 60.

2. Petitioner states, p. 5, that following his arrest by immigration authorities in Ohio, and

> "on December 26, 1946 and on January 20, 1947 the Michigan authorities advised the immigration service: 'Our parole board is not the least interested in this

---

[1]

The law in effect at the time of the commission of robbery, while armed, by Frank Cammarata, will be found in Vol. 3 Mich. Comp. Laws 1929, § 16722, reenacted as § 529 of the Michigan Penal Code.

matter, and has no intention of interceding in any respect.' "

The letters to which reference is had, however, plaintiff's Exhibits F and G (R. 144-145), clearly indicate that the matter in which the Michigan parole board was "not the least interested," was the application of Frank Cammarata for a pardon from the Governor of Michigan.

3. It is intimated, p. 5, that the parole issued to petitioner on December 16, 1936, carried only the typewritten signature of the commissioner of paroles. Petitioner does not advise the Court that the exhibit (Defendant's Ex. 3-M, R. 173) is merely an unsigned office copy of the special conditions of such parole, taken from the files and records of the Michigan parole authorities and properly received in evidence.

4. Since further, more elaborate, and correct factual details are set forth in the opinion of the court of common pleas, post, pp 13-25, and since none of them is challenged in the petition for certiorari, they are hereby adopted as part of our counter-statement of the case.

IV

Manner in Which Federal Questions Raised.

An explanation is in order with respect to petitioner's statement under this caption, petition, pp. 7-8, where it is said:

> "As against petitioner's contention that he was denied due process of law guaranteed by the XIVth Amendment, the State of Ohio urged in its brief in opposition to the Motion to Certify in the Ohio Supreme Court:

'5. The Court of Appeals did not err in holding appellant had not been denied due process of law as guaranteed under the 14th Amendment, because the 14th Amendment applies only to citizens who have been either born or naturalized in this country and because appellant is an alien.' "

The foregoing was merely our formal answer to appellant's [petitioner here] 5th assignment of error; the clause, "because the 14th Amendment applies only to citizens who have been either born or naturalized in this country and because appellant is an alien," was, as we now know, an incorrect statement of constitutional law; the point was not urged upon the Supreme Court of Ohio either in our brief or oral argument; and a careful examination of the opinion of the Court of Appeals, *post*, pp 26-37, discloses that the court did not so hold.

V

Reasons for Opposing Petition for Certiorari.

Petitioner urges in his supporting brief: (1) that he is not a person charged with the commission of a felony or other crime rendering him extraditable under Article 4, § 2, Cl. 2, of the Constitution of the United States; (2) that the State of Michigan is powerless to act in the matter of deportation of an alien; and (3) that the Ohio court's determination that an alien is not entitled to the protection of due process of law and equal protection of the law is in conflict with the decisions of this Court. Since it is our position that such objections are wholly without merit, we choose to treat them summarily.[2]

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[2] We make this choice in view of the comprehensive opinions of the courts of Ohio, post, pp 13-37, upon which we stand.

1

Cammarata is a fugitive from Michigan's justice.

Counsel with commendable candor concede, p. 9, that a paroled prisoner, who has left the State of conviction, pursuant to the terms of his parole, but later violates the parole, is a fugitive from justice subject to extradition within the Constitution of the United States, Art. IV, § 2, cl. 2, citing

Reed v. Colpoys, 99 F. 2d 396;
cert. den., 305 U.S. 598.

From this point of concession, the argument runs somewhat as follows: on the date of petitioner's release, no Michigan statute authorized the parole of a prison inmate to Federal officers for deportation; only the Governor of Michigan, in exercise of his exclusive constitutional power to grant pardons, commutations and reprieves, Mich. Const. 1908, Art. VI, § 9, could lawfully effect the surrender of petitioner to the Immigration Service of the United States; parole is a creature of the legislature, and a person incarcerated in a Michigan state prison may be paroled only where there is express statutory authorization, citing

People v. Bendoni, 263 Mich. 295.

Moreover, it is urged, petitioner's release to the Immigration Service for deportation, was effected in absolute disregard of certain mandatory provisions of the Michigan parole law, sections of which are cited in petitioner's brief, pp. 10-11. Consequently, it seems to be claimed, the parole of Cammarata in 1936 was invalid under Michigan law. And the courts of Ohio were in error when they held otherwise.

There are, we respectfully submit, several sound answers to the petitioner's contentions:

1. At the time of petitioner's release from prison in 1936, the law prescribing the manner of applying for pardons and paroles of prisoners, then in full force and effect, was Pub. Acts Mich. 1921, No. 403; 3 Mich. Comp. Laws 1929, § § 17513-17520; Mich. Stat. Ann. [Henderson] § § 28.1291-28.1298,[3] which created [§ 1] in the executive department the office of commissioner of pardons and paroles, appointed by the Governor during his pleasure.

Section 3 thereof prescribed the manner of applying for executive clemency, in the nature of pardon, reprieve or parole, in behalf of persons convicted of crimes and misdemeanors and undergoing sentences of imprisonment therefor; such an application should state the name of the prisoner and certain other information required by such section, "and such other statements as the *governor* may require." Furthermore, it provided:

> "Each applicant shall affirmatively promise in such application to obey any conditions imposed upon him by the *governor* . . ." [Emphasis, added].

Section 4 required the commissioner of pardons and paroles, upon receipt of such an application, to "notify the *governor* thereof, and . . . make or cause to be made such investigation and report respecting the same as the *governor* may require." And, under the terms of this section, all matters pertaining to such investigations, etc., were under the direction of the governor. Moreover,

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[3] Repealed by Pub. Acts 1937, No. 255, which in turn was repealed by Pub. Acts 1947 (2d Ex. Sess.), No. 4.

> "Hereafter, all paroles under the indeterminate sentence law, so-called, shall be made and terminated by order of the *governor* only. . . ." [Emphasis, added].

Thus it clearly appears, contrary to counsel's contention, that under the Michigan parole law in 1936, the governor, in exertion of his constitutional power, could affix to paroles such reasonable conditions as he saw fit. And banishment from the country, under Federal immigration laws, would not be an unreasonable condition of parole.

> *Kavalin v. White*, 44 F. 2d 49, and cases cited; Annotation, 60 ALR 1415-1416.

Moreover, Cammarata applied for parole on condition that he be deported to Italy, and he expressly promised never to return.

2. Cammarata is not in a very favorable position from which to attack the validity of his parole under Michigan law. A void parole has no effect upon the original judgment,

> *Ex Parte Davis*, 250 Mich. 210,

and, under decisions of the Michigan Supreme Court, petitioner's parole in custody of the warden for deportation only, would not constitute a waiver of jurisdiction in event of a violation of the conditions of such parole,

> *In re Dawsett*, 311 Mich. 588, 595-596;
> *Jurczyszyn v. Parole Board*, 316 Mich. 529, 539.

3. Finally, it does seem to us that the validity of the parole granted Cammarata [on his own application] by the Governor of Michigan, under Michigan law, as construed by Michigan's highest court, is a matter to be determined

by the courts of Michigan if, as and when Cammarata is returned to the State having jurisdiction over his person. We respectfully submit, it is not a Federal question.

2

That Michigan is powerless to act in the deportation of an alien, has no bearing on the case at bar.

The matter of deportation of aliens, the power and duty to exclude or expel, is of course for the Congress to regulate and its designated Federal authority to execute,

Fong Yue Ting v. United States, 149 U.S. 698.

But in the case at bar, Michigan has not legislated within this exclusive Federal field, nor has any Michigan official in any manner interfered with the Immigration Service.

What happened was simply this: a prisoner of Michigan applied to the Governor for clemency; in so doing, he expressed a desire to return to his native Italy; the Governor commuted his sentence, thus making the prison inmate eligible for parole; and he was paroled to the warden of the prison on condition that he be turned over to the immigration officers for deportation to Italy. The condition of his parole, expressly accepted by him, was that he should never return to the United States. Thereupon he was deported, not by Michigan, but by Federal officers, acting pursuant to Federal law. He arrived in Italy, joined the Army of that country, deserted its ranks, fled to the United States, entered this country illegally, and later was picked up by Federal authorities. In returning to the United States, he violated the condition of parole which he had gladly accepted, and he thus became subject to reimprisonment to serve out the term originally imposed by Michigan.

3

The Ohio courts did not determine that an alien is not entitled to Due Process of Law, or equal protection of the law, nor did Michigan urge the matter upon the Ohio courts.

We have carefully examined the opinion of the court of appeals and fail to find any such determination by that court. Of course, it should go without saying that an alien is entitled to Due Process and equal protection; the decisions cited by counsel so affirm. But the court below did not decide such a question, and the error, if any, somehow crept into our answer to Cammarata's 5th assignment of error in the Ohio Supreme Court. Please see this brief, p. 3-4, *ante*, for a full explanation.

VI

Conclusion.

We therefore respectfully submit that since no Federal question of substance is presented, the petition for certiorari should be denied.

Respectfully submitted,

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APPENDIXES

Appendix "A"

Copy of Opinion of The Court of Common Pleas, Trumbull County, Ohio, In the Matter of Frank Cammarata.

(Filed, Aug. 23, 1951)

The Plaintiff seeks release from the custody of the Defendant Sheriff of this county by an action for a writ of habeas corpus.

To be decided is the right of the Governor of Michigan to requisition the plaintiff as a fugitive from Michigan justice.

Convicted of the crime of armed robbery the plaintiff was committed on February 26, 1931 to the Southern Michigan Prison for a term of not less than fifteen years and a maximum of thirty years.

On November 16, 1936 the Governor of Michigan, Frank D. Fitzgerald, issued the following commutation with reference to plaintiff's sentence:

> "I, Frank Fitzgerald, Governor of the State, by virtue of the power and authority in me vested, do hereby commute the sentence of the said Frank Cammarata so that the same will read: six and one-half years to thirty years, less good time allowance for deportation only."

Plaintiff's application for clemency, bearing date of November 26, 1936 and signed by the plaintiff stated that if released he desired to go to Italy.

The date of this application for clemency—November

26, 1936—is exactly six and a half years after plaintiff began his sentence on February 26, 1936. It is not explained in the evidence why this application appears to have been made ten days following the issuance of the Governor's commutation of sentence.

On December 16, 1936 the plaintiff was paroled to the warden by an order, the admissibility of which plaintiff challenges.

It says in part:

> "Whereas it is desired to parole Frank Cammarata, No. 29806 in custody of the Warden for delivery for deportation to Italy. In the event subject is not deportable this action is void. Immigration authorities to hold this inmate against bail, should he attempt to stay deportation. Must never return to the United States. Immigration authorities to notify Parole Department when subject actually leaves the Country."

It goes on to say that:

> "Now therefore know ye, that I, Frank D. Fitzgerald, Governor as aforesaid, by virtue of the power and authority in me vested by law, do hereby parole said Frank Cammarata and permit him to go at large, outside the buildings and enclosures of said prison."

The affidavit of J. N. Frisbie, the present warden of Southern Michigan Prison, which affidavit is one of the requisition documents, states that Cammarata agreed to this parole order.

On December 16, 1936 the plaintiff was delivered by the prison authorities to the custody of the Immigration

and Naturalization Service, who took him to the Port of the City of New York from which he sailed for Italy on January 9, 1937.

The affidavit of J. N. Frisbie further states that "Information at hand discloses that on or between September 1, 1939, and December 1st, 1939, Frank Cammarata entered the United States illegally. His presence in this country was discovered by the Immigration authorities in July, 1946."

Arrested by the Immigration and Naturalization Service in July of 1946 on a warrant of deportation, the plaintiff has remained out on bond continuously except for March and April of 1948 during which period his bond was revoked and he was restrained at Ellis Island. On April 20, 1948 the United States District Court for the Southern District of New York released him on bond and granted a thirty day stay of his deportation warrant to permit him to prosecute an application for pardon with the governor of Michigan and a motion for a new trial in the case in which his conviction for armed robbery sent him to prison.

Apparently there has been no attempt by the Immigration and Naturalization Service to pick him up since his release from Ellis Island.

In 1946 the Michigan parole board was notified of the presence of the plaintiff in this country and was queried by the Immigration and Naturalization Service as to whether it wanted Cammarata. Its legal advisor answered that "our parole board is not in the least interested in the matter, and had no intention of interceding in any respect which you may have in mind."

The plaintiff, between 1946 and the present time, has

three times been denied an application for full pardon by the governor of Michigan, the last denial being in 1950.

On November 14, 1950 a parole violation warrant was issued to J. N. Frisbie, the warden of Southern Michigan Prison, for the plaintiff, by Herbert W. Straley, the Director of the Division of Pardons, Paroles and Probation for the State of Michigan.

He was arrested and jailed in Youngstown on said warrant, but later was released on bond pursuant to a writ of habeas corpus granted by the court of appeals of this district.

The affidavit of J. N. Frisbie, previously referred to, further states that "Deportation in this case has been held up, according to the United States Immigration Service because 'the service has to date been unable to secure the required travel documents and Private Bill HR 3890 is still pending' . . . and his deportation does not appear to be an imminent possibility to protect fully the public we are compelled to return him to prison in Michigan, and we are requesting that the Governor of Ohio be asked to turn him over to Michigan authorities."

Thereafter on the second day of March 1951, the Governor of Michigan issued his requisition to the Governor of Ohio for the Plaintiff. On March 5, 1951 the Governor of Ohio issued his warrant of extradition for the plaintiff to the sheriff of Mahoning County, who, subsequently arrested the plaintiff and placed him in the Trumbull County jail.

Plaintiff has applied for a writ of habeas corpus to test the legality of his arrest on the extradition warrant, as he has a right to do under Section 109-10 of the

Uniform Extradition Act (Section 109-1 to Section 109-32 of the General Code.)

To show that he is unlawfully restrained of his liberty under the warrant of extradition the proof must make it probably that the plaintiff is not NOW subject to the sentence of imprisonment in Southern Michigan Prison imposed on the plaintiff on February 26, 1931, and commuted by Governor Fitzgerald on November 16, 1936.

It becomes essential to determine the effect of the Governor's commutation on the original sentence.

The original sentence was an indeterminate one whose minimum was 15 years and whose maximum was 30 years.

The meat of the commutation stated:

> "I, Frank Fitzgerald, Governor of the State, by virtue of the power and authority in me vested do hereby commute the sentence of the said Frank Cammarata so that the same will read: six and one half years to thirty years, less good time allowance for deportation only."

It is evident that the commutation continues the maximum term of years without change. It was 30 years. It is still 30 years.

The minimum term of the sentence was reduced. It was 15 years. It is cut to 6½ years.

Undoubtedly the reason for this reduction was because the Michigan law, then in effect, required service of the minimum term of an indeterminate sentence to make the prisoner eligible for the Governor to parole him (Mich-

igan Statutes Annotated 28.1341, C.L. '29 17537). As a result of the commutation of the minimum term to 6½ years the Plaintiff became eligible for parole on November 26, 1936. On December 16, 1936 he was paroled for deportation, the validity of which order will presently be considered.

It is plain that the commutation did not effect the maximum sentence but only changed the minimum sentence.

But even the commutation of the minimum sentence was not absolute.

A fair reading of the entire commutation indicates that the commutation of the minimum sentence was "for deportation only."

Deportation is defined as "the removal, from a country, of an alien considered inimical to the public welfare or not lawfully there" and is symonomous with "banishment." Webster's New International Dictionary, 2nd Ed.

Deportation is more than just the act of being sent out of the country. The deportee is not only required to leave the country. He is also obligated not to return.

Reasonably construed the commutation of sentence reduced the minimum sentence from 15 years to 6½ years *only* if the plaintiff left the country and did not return.

The Governor thereby placed a condition upon the effectiveness of the commutation of the minimum sentence, as he was empowered to do under Article VI, Section 9 of the Michigan Constitution. That section authorized him to "grant . . . commutations and pardons after convictions . . . upon such conditions and with such re-

strictions and limitations as he may think proper."

The power of the executive to condition a pardon upon the person deporting from and remaining outside the State has been upheld. Kavalin v. White 44F. 2d 49.

Had the deportation not materialized the commutation of the minimum sentence would have been subject to revocation.

Furthermore since the order of deportation i. e. the plaintiff's banishment from this country—was violated by the plaintiff's illegal return to this country, the condition of the commutation of the minimum sentence thus terminated. The commutation of the minimum sentence was thereby rendered vulnerable to revocation.

It seems likely however, that the elapse of the minimum period of 15 years (it expired no later than February 26, 1946) renders a revocation of the minimum sentence now unnecessary. Nevertheless since the commutation only applied to the minimum sentence a revocation of the commutation was never necessary to reinstate the maximum sentence of 30 years, less allowance for good time. For this maximum sentence, untouched and unchanged by the commutation, has remained in full force and effect at all times.

No provision was made in the Governor's commutation of sentence to release the plaintiff from prison. Had there been no parole order issued subsequently the plaintiff could not have been released from prison. The commutation alone therefore did not release him. It only served to make it possible to release him by making him eligible for parole.

The plaintiff was released from prison pursuant to the parole order on December 16, 1936.

In 1936 the power to parole was lodged in the Governor of Michigan. By Section 28.1294 Michigan Statutes Annotated (C.L. '29, 17516) "all paroles under the indeterminate sentence law . . . shall be made and terminated by order of the Governor only . . . ". And Section 28.1341 Michigan Statutes Annotated (C.L. '29, 17537) authorized the Governor "under such rules and regulations as he may prescribe, to issue a parole, or permit to go at large, to any convict who is, or hereafter may be, imprisoned in any of the prisons of this State, who . . . may have served the minimum term provided by law for the crime for which he was convicted . . ."

The Governor exercised his power to parole through and by means of a commissioner of pardons and paroles. Such a parole order might be signed by the commissioner at the direction of the Governor. Section 28.1296, Michigan Statutes Annotated (C.L. '29, 17518).

The parole order of December 16, 1936 was issued at the direction of the Governor Fitzgerald, and was signed by the Commissioner of Paroles and Pardons. On its face it conforms to the foregoing applicable sections of the Michigan laws.

Said parole order provided that:

> "Whereas it is desired to parole Frank Cammarata, No. 29806 in the custody of the Warden for delivery for deportation to Italy. In the event subject is not deportable this section is void. Immigration authorities to hold this inmate against bail should he attempt to stay deportation. Must never return to the United

States. Immigration authorities to notify Parole Department when subject actually leeaves the country."

Having in mind that the commutatiion of the minimum sentence was "for deportation only",, and that deportation means banishment from this counttry without the right to return, it is apparent that the terms and conditions of the parole order are entirely consistent with and in furtherance of the commutation of sentence.

Accordingly this parole order is ncot tainted with the infirmity which voided the parole order in the case of *People ex rel Atkins v. Jennings* 225 N.Y.S. 72 where its conditions exceeded the limits of the condition of the commutation of sentence.

A Governor in effecting the purposses of his commutation of sentence has the right to utilize the State Parole agency, *People ex rel v. New York State Board of Parole* et al 63 N.Y.S. 2d 727. If this is true where the parole agency acts independently of the Governor, surely the Governor could exercise his own exclusive power over parole so as to implement his commutation of sentence.

Nor does the four year limitation on the time limit of paroles which the governor could then give, section 28.1319 Michigan Statutes Annotated (C.L. '29 17527) invalidate this order of parole. The delivery of the plaintiff into the hands of the immigration authorities occurred without four years so that the warden completed his duties as parole supervisor of the plaintiff within the statutory maximum period. Moreover the plaintiff's illegal return to this country, in violation of the parole order's terms, occurred within four years of its issuance.

The parole order was valid and therefore admissible.

Inasmuch as the plaintiff was released from prison pursuant to the parole order, his release is necessarily governed by its provision that he should never return to the United States. The affidavit of the Warden of Southern Michigan prison states that Cammarata agreed to the parole order, a statement the plaintiff did not take the stand to deny. Since the parole order—to which he agreed and whose benefits he accepted—only sanctioned his release from prison for purposes of deportation, the parole order ceased to validate his further release from prison at the moment he unlawfully returned to this country.

It follows that from the day the plaintiff made his way back into the country in 1939 he has continued to be subject to reincarceration to serve out the maximum term of 30 years less good time allowance, maximum term has never been modified.

Nor would the result be any different if, as plaintiff contends, the parole order were invalid.

Since plaintiff's *release* from prison *stemmed solely* from the parole order, any determination that the parole order was invalid would automatically illegalize plaintiff's release from prison on December 16, 1936. If illegally released at all times since the 16th of December 1936 he has been subject to reincarceration under the unexpired maximum term of his original sentence.

Plaintiff contends, by a motion for judgment, that since he did not physically flee from the state of Michigan he is not a fugitive from Michigan justice.

This contention is not tenable and the motion is overruled.

Being subject to reincarceration under an uncompleted sentence of imprisonment he is a fugitive from Michigan justice even though he left the state of Michigan voluntarily for deportation purposes. "One is a fugitive from justice, within the contemplation of the . . . constitutional provision, who, having been charged with a crime in the demanding state, leaves the state for any purpose whatsoever. *Appleyard v. Massachusetts,* 203 U.S. 222, 27 S. Ct. 122, 1 L. Ed. 161, etc.; *Roberts v. Reilly,* 116 U.S. 80, 6 S. Ct. 291, 29 L. Ed. 544; *Reed v. Colpoys,* 69 App. D.C. 163, 99 F. 2d. 396, certiorari denied 305 U.S. 598, 59 U. Ct. 97, 83 L. Ed. 379." See *People v. Becker,* 47 N.E. 2d 475 at 479. (A parole violator present outside of Illinois, under a banishment parole nevertheless was held to be a fugitive from justice.)

Furthermore Michigan has never condoned or forgiven his illegal reentry into this country, and has never approved his presence in Ohio. He is clearly a fugitive from Michigan justice.

Nor has the state of Michigan waived its jurisdiction over the plaintiff either by reason of the correspondence carried on by the legal advisory to the Michigan Parole Board with the Immigration and Naturalization Service (referred to in the recitation of fact) or by reason of the claimed appearance of the plaintiff in the outer office of Governor Sigler of Michigan in connection with the plaintiff's application for a pardon.

A waiver of the right of the state of Michigan to require service of the balance of the unexpired term of the plaintiff's sentence could only be effected by an *express relinquishment* of this right by the Governor. See *People v. Robinson* 98 N.E. 2d 119 in which the Su-

preme Court of Illinois on March 7th, 1951 rehearing denied April 20, 1951) held on this very question of waiver that

> "There was never any waiver of jurisdiction caused by the Governor of the State of Illinois signing an extradition warrant, or commuting or ending petitioner's sentence, and hence the question of waiver is not in the case."

There being no express relinquishment by the Governor of Michigan, his state's jurisdiction over the plaintiff has never been lost.

Plaintiff, by his counsel emphatically insists that he is innocent of the crime of armed robbery, the conviction for which crime produced the sentence which is still not completely served. A statement of one James Schaules was offered by the plaintiff which purports to exonerate the plaintiff and implicate Schaules in said crime. This court perforce excluded this statement and is precluded from any consideration of the matter of the plaintiff's guilt or innocence under the express mandate of Section 109-20 of the Uniform Extradition Act.

Beyond the scope of this inquiry also is the matter of the motive, if any, which may now prompt the Governor of Michigan to initiate these extradition proceedings. Under the Uniform Extradition Act the good or bad faith of the demanding state in making the requisition for the fugitive is immaterial. *State v. Gregg* 68 Ohio App. 397.

Accordingly the correspondence which passed between the Michigan parole authorities and the Youngstown Chief of Police concerning the plaintiff's alleged activities in the Youngstown area was excluded. Likewise the ref-

erence in the Warden's affidavit to the same matter has been ignored.

This court, in this inquiry, cannot pass upon the merits of the charge against the plaintiff *Commonwealth v. Good* 58 A. 2d 842. The proper form in which to challenge the merits of the present charge is in the appropriate Michigan Court.

This Court's only function in this inquiry is to determine the probabilities of the charge against the plaintiff.

Acting pursuant to that limited function it does appear from the entire record that it is probable that the plaintiff is now subject to reincarceration in the Southern Michigan Prison for the balance of his unexpired term of thirty (30) years, less good time allowance.

Plaintiff is, therefore, a fugitive from Michigan justice and is lawfully in the custody of the sheriff of this county, pursuant to the warrant of extradition. The plaintiff's petition for a writ of habeas corpus will be denied, his recognizance bond is cancelled, and his extradition warrant may be executed.

Sgd. William K. Thomas

Judge

Appendix "B"

Copy of Opinion of the Court of Appeals of the Seventh Judicial District of Ohio, Trumbull County, In the Matter of Frank Cammarata.

(Decided, March 27, 1952)

Nichols, P. J.—This cause is in this court on appeal on questions of law from the judgment of the Common Pleas Court of Trumbull County, Ohio, denying the application of Frank Cammarata, for a writ of habeas corpus.

Appellant, Frank Cammarata, on the 26th day of February, 1931, was sentenced in the Recorder's Court for the City of Detroit, Michigan, to serve 15 to 30 years in the State Prison of Southern Michigan, having been found by a jury guilty of the crime of robbery, armed. After being admitted to bail pending appeal, his conviction was affirmed by the Michigan Supreme Court (257 Michigan 60) and he was returned to prison February 5, 1932.

On November 16, 1936, Cammarata's sentence was commuted by the Governor of the State of Michigan so as to read "6½ to 30 years, less good time allowance for deportation only." Such commutation of sentence was made by the Governor upon application made by Cammarata and was formally presented to him while an inmate of the prison and on December 1, 1936, was accepted by him with its provision for deportation. The record indicates he was told that in order for the commutation to become effective it would be necessary that he be paroled in the custody of the warden of the prison for delivery to the United States Immigration Officials for deportation to Italy. Cammarata filed his application for such parole upon printed form

furnished him as required by law, such application being made an exhibit shown in the record now before this court, and he evidenced his consent to the terms and conditions thereof by his written signature.

At the time of such application for parole Cammarata had been imprisoned for 5 years, 8 months and 20 days, which with allowance for good behavior, equaled 6½ years, the minimum period of his sentence, as commuted by the Governor and prior to which he could not be paroled in accordance with the then existing law, although the Governor could have granted a complete pardon conditioned upon his being deported.

Pursuant to such application for parole, there was issued a certificate of parole, signed by "J. C. Armstrong, Commissioner of Pardons and Paroles", which recites that it is issued at the direction of the Governor, and states as follows:

> "Whereas, it is desired to parole Frank Cammarata No. 29806 in custody of warden for delivery to Immigration Officials if and when called for, for deportation to Italy. In the event subject is not deportable this action is void. Immigration authorities to hold this inmate against bail should he attempt to stay deportation. Must never return to the United States. Immigration authorities to notify parole department when subject actually leaves the country."

Such parole certificate was delivered to the warden of the prison, and pursuant thereto Cammarata was delivered to the Immigration authorities and he was deported to Italy on January 9, 1937.

According to an application for pardon filed by Cammarata on or about December 13, 1949, it is shown that he was reunited with his family in Naples, Italy, in 1937, and he was conscripted into the Italian army in April, 1937. In September, 1939, he deserted from the Italian army, secured employment on a merchant vessel running between Italy and the United States and re-entered the United States illegally in 1939, and he has been in the United States illegally ever since. His applications for pardon have not been acted upon favorably.

On July 17, 1946, Cammarata was arrested by Immigration authorities in Ohio and the Michigan Parole Board was advised of his arrest and inquiry made of that Board whether they were interested in having him returned to Michigan and were advised "that our Parole Board is not the least interested in this matter and has no intention of interceding in any respect with any proceedings which you may have in mind." In the meantime Cammarata was in Detroit at times with his family, who had returned to this country in 1937, and on one occasion at least was in the office of the Governor of Michigan in connection with his application for pardon and no effort was made by Michigan parole authorities to take him into custody for violation of his parole. For several years he has resided with his family in Warren, Trumbull County, Ohio, there being no record of any convictions of him for crime since his illegal entry into the United States in 1939.

The record before this court indicates that the immigration authorities attempted to deport Cammarata because of his illegal entry into the United States, and he was arrested for that purpose but was admitted to bail by the United States District Court for the Southern District of New York, Ryan, J., April 28, 1948. Warrant of Deportation was stayed by that court for a period of thirty days,

upon Cammarata giving bond in sum of $10,000.00, to enable him to appear in the Recorder's Court in Detroit, and also to prosecute his application for pardon, made upon his petition for judicial review of a final order of deportation made by the Commissioner of Immigration and Naturalization.

November 14, 1950, Herbert W. Staley and Gus Harrison, State Supervisors of Pardons and Paroles issued a parole violation warrant directed to J. N. Frisbie, Warden of the State Prison of Southern Michigan reciting that Cammarata was paroled from State Prison of Southern Michigan for deportation to Italy December 16, 1936, and that satisfactory evidence under Public Acts of 1947, State of Michigan, was presented showing that Cammarata was delinquent between September 1, 1939 and December 1, 1939, and commanded to execute this warrant by apprehending and returning said escaped prisoner to such institution as shall be designated.

March 2, 1951, Governor Mennen Williams of the State of Michigan issued the request for extradition for Frank Cammarata to the Governor of the State of Ohio as a fugitive.

March 5, 1951, Governor Frank Lausche approved the extradition of Frank Cammarata and a warrant for the arrest of Frank Cammarata was issued.

August 29, 1951, Court denied Writ of Habeas Corpus and dismissed the petition. Appeal is hereby predicated to this court from said charge.

An interesting phase shown by the evidence in this case is seen from the fact that a convict in the Michigan prison, made a complete and detailed confession that he and not

Cammarata had perpetrated the crime for which Cammarata was tried, convicted and sentenced to prison. Such confession was used by Cammarata in an application for a new trial of his case and also as ground for his pardon in his applications for pardon by the Governor. This court may not properly review the actions of the Michigan court or the Governor of Michigan in relation to such motion for new trial or applications for pardon.

> "Counsel for Relator contends this commutation was a conditional commutation and when the prisoner was turned over to the United States immigration officials and then deported in accordance with this executive order and left the United States on January 9, 1937, the prisoner had complied with the executive order and any further attempt to exercise jurisdiction over the subject was contrary to law. Counsel therefore maintains that any subsequent action from November 16, 1936, by any administrative officer or any board of the state of Michigan was in contravention of the constitutional power of the Governor of the State of Michigan.
>
> "Counsel for Relator contends that Cammarata was never under the jurisdiction of the Pardon and Parole Board of the State of Michigan because in law and fact the entry of Governor Fitzgerald placed the Relator beyond the jurisdiction of the Parole and Pardon Board."

With such claims and contentions this court cannot agree.

An examination of the certificate of the Governor commuting the sentence of Cammarata clearly shows that the Governor had no intention to pardon. It may be con-

ceded that the order of the Governor must be interpreted by its legal effect, and whether it was denominated as a pardon or commutation is immaterial. But the term "pardon" is used to describe a complete and total cancellation of punishment, whereas the term "commutation" is used to describe a substitution of a lesser or partial punishment. It is clear from the language of such certificate, and from the further action of the Governor in granting the parole of Cammarata, that the Governor did not intend a complete and total cancellation of Cammarata's punishment; the period of maximum imprisonment was left unchanged and only the minimum sentence was changed from 15 years to 6½ years for the sole purpose that he might be paroled for deportation, which would require his assent thereto and to the terms thereof. Cammarata knew that the commutation order was not self-executing; he knowingly executed his application for parole and accepted the conditions thereof. He could not accept the benefits of clemency without accepting conditions attached thereto.

It must be remembered that the parole certificate was executed *by direction of the Governor*, who prescribed its conditions, which conditions, among others, were that he would be of good behavior and would never return to the United States. Section 28.1293 of the Michigan statutes, in force at that time, provided:

> "Sec. 3. Hereafter, all applications for executive clemency, in the nature of pardon, reprieve, or parole, in behalf of persons convicted of crimes and misdemeanors and undergoing sentences of imprisonment therefor, shall be filed with the commissioner of pardons and paroles. * * * Each applicant shall affirmatively promise in such application to obey any conditions imposed upon him by the governor, to

obey the laws and to behave himself as becomes a law-abiding person wherever he may be * * *."

It is difficult to imagine that in commuting Cammarata's minimum sentence "for deportation only" it was contemplated by the Governor, or by Cammarata, that immediately on being deported, perhaps as short a period as one day, he could return to the United States and thereafter be free from punishment for his crime, much less that he could return illegally, as he admits he did.

It is true that the Michigan law in effect at the time Cammarata was paroled provided that no parole could be granted for a period longer than four years. Had Cammarata not violated his parole within four years from its date another question might be presented, but he did violate it within four years. The Michigan statute in effect at that time, Section 28.1319, further provided that before he would be finally discharged at the end of the parole period he must comply with the following provision of the Act:

> "After any prisoner *has faithfully performed all of the obligations of his parole* for the period of time so fixed * * he shall be deemed to have fully served his entire sentence and shall then receive a final discharge from the warden or superintendent in whose custody he is." (Emphasis supplied.)

Section 28.1316, Michigan statutes, then provided:

> "A convict violating the provisions of his parole and for whose return a warrant has been issued by the warden or superintendent, shall after the issuance of such warrant be liable, when arrested, to serve out

> the unexpired portion of his maximum imprisonment, and the time from the date of his declared delinquency to the date of his arrest shall not be counted as any portion of the time to be served."

Cammarata knew he could not comply with such statutes and could not obtain such certificate of discharge because he had not performed all of the obligations of his parole, and knew that to be discharged from punishment he would have to secure a pardon from the Governor of Michigan, and his knowledge to that effect is demonstrated by the fact that he has made three applications for pardon, none of which has been granted.

Counsel for Cammarata lay considerable stress upon the fact that when notified by the immigration authorities that they had Cammarata in custody, the parole authorities of Michigan stated they were not in the least interested in him. We believe it quite understandable that such parole authorities may well have been content that the immigration authorities proceed with his deportation for illegal entry into the United States. Six years have since intervened and he has not been deported. The expressed lack of interest in having him returned to Michigan for violation of his parole may only indicate the desire of the parole authorities to get Cammarata out of this country rather than back in the Michigan prison. He aroused that desire when he applied for the commutation of sentence and filed his application for parole. The Michigan authorities may still be willing for his deportation in the event he is returned to that State.

In a certain letter, dated December 21, 1950, written by the State Supervisor of Paroles, Department of Correction, State of Michigan, addressed to the Chief of Police

of the City of Youngstown and admitted in evidence on behalf of Cammarata, it is stated that "the Immigration Service has to date been unable to secure the required documents and deportation has been held up because Private Bill H R 3890 is still pending, and so long as it is pending deportation cannot be effected." Such letter further states: "It is our opinion that this man, since his deportation does not appear imminent, should be returned to Michigan as a parole violator."

Section 28.1311, Michigan statutes, in force at the time of the commutation and parole, provides that authority to grant paroles is conferred exclusively upon the governor in certain cases, none of which is applicable to the offence of which Cammarata was convicted, and further provides:

> "In all other cases such authority is hereby conferred upon the advisory board in the matter of pardons. The governor and the advisory board in the matter of pardons *acting jointly* shall have authority to adopt such rules as may, by them, be deemed wise or necessary to properly carry out the provisions of this act, and to amend such rules at pleasure; *provided,* Prisoners under the provisions of this act, shall be eligible to parole only after the expiration of their minimum term of imprisonment."

Section 28.1291 provided:

> "Sec. 1. There is hereby created in the executive department the office of commissioner of pardons and paroles, * * * deemed to be the successor to and shall perform the duties and exercise all the powers required of and conferred upon the advisory board in the matter of pardons." * * * "The advisory board in the matter of pardons * * * is hereby abolished."

Section 28.1292 provided:

"Such commissioner, under the direction of the governor shall have charge of all files, records and documents pertaining to the matter of pardons and paroles * * *."

Section 28.1294 provided:

"Sec. 4. Upon receipt of any application for pardon or parole, the commissioner shall notify the governor thereof and shall make or cause to be made such investigation and report respecting the same as the governor may require." The section further providing what may be done by the commissioner, "under the direction of the governor."

Section 28.1313 provided:

"Sec. 6. Application shall be made to the governor or to the advisory board in the matter of pardons upon uniform blanks prescribed by the governor and the advisory board in the matter of pardons *acting jointly*, * * *."

Section 28.1315 provided:

"Sec. 8. Every such convict, while on parole, shall remain in the legal custody and under the control of the warden or superintendent of the prison from which he is paroled and shall be subject at any time to be taken back within the enclosure of said prison for any reason that may be satisfactory to the warden or superintendent, and full power to retake and return any such paroled convict to the prison from which he was allowed to go at large is hereby expressly conferred upon the

> warden or superintendent of such prison, whose written order shall be a sufficient warrant authorizing all officers named therein to return such paroled convict to actual custody in the prison from which he was permitted to go at large. * * *"

The section further provides what shall be done by the warden or superintendent when such paroled convict is returned to prison.

Section 28.1316 provided:

> "A convict violating the provisions of his parole and for whose return a warrant has been issued by the warden or superintendent shall, after the issuance of such warrant by the warden be treated as an escaped prisoner owing service to the state * * *."

It seems quite clear that under the Michigan laws referred to, paroles are an integral part of the procedure for commutation of sentence by the governor, the commissioner of pardons and paroles (successor to the advisory board in the matter of pardons) and the governor acting jointly. That was the procedure adopted in the matter of the commutation and parole of Cammarata, without such joint action neither the commutation or parole would have been effected.

The Governor of the State of Ohio has honored the requisition of the Governor of the State of Michigan for the arrest of Cammarata and his delivery to officers for return to Michigan as a fugitive from justice. We find nothing illegal in the action of the Governor of Ohio. None of the authorities cited which are claimed to hold to the contrary are based upon facts the same or similar to those here shown. The writ of habeas corpus was properly denied by the

Common Pleas Court of Trumbull County and its judgment must be and is affirmed.

Nichols, P. J. and Griffith, J. concur in the opinion and judgment.

Approved:
John C. Nichols
Lynn B. Griffith

Phillips, J. concurs in the judgment and opinion.
Elmer T. Phillips